

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VAN CLEVE ASHLEY,

*

Petitioner,

v.

*

Civil Action No.: RDB-16-1931

Criminal No.: RDB-06-0034

UNITED STATES OF AMERICA,

*

Respondent.

* * * * *

MEMORANDUM ORDER

Now pending before this Court is Petitioner's Motion to Vacate Judgment under 28 U.S.C. § 2255. (ECF No. 82.) Petitioner seeks vacatur of his 18 U.S.C. § 924(c) conviction. By agreement of counsel, the Motion to Vacate that conviction (ECF No. 82) is GRANTED.

Pursuant to 18 U.S.C. § 924(c), an additional term of incarceration may be imposed upon "any person who, during and in relation to any crime of violence...uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm." The "crime of violence" underlying Ashley's § 924(c) charge was conspiracy to tamper with a witness. (Judgment & Commitment Order, ECF No. 41.) Counsel acknowledge that this offense no longer qualifies as a crime of violence in light of the recent opinion of the United States Supreme Court in *United States v. Davis*, 139 S. Ct. 2319 (2019) and the opinion of the United States Court of Appeals for the Fourth Circuit in *United States v. Simms*, 914 F.3d 229, 233 (4th Cir. 2019) (en banc).

Accordingly, the Defendant Ashley is entitled to a resentencing in the criminal case, *United States v. Ashley*, Criminal No. RDB-06-0034. Therefore, the Motion to Vacate (ECF No. 82) is GRANTED and the civil case, *Ashley v. United States*, Civil No. RDB-16-1931, shall be CLOSED. Ashley's resentencing has been scheduled for September 24, 2020 at 3:00 p.m.

IT IS HEREBY SO ORDERED THIS 26TH DAY OF MAY, 2020.

_____/s/_____
Richard D. Bennett
United States District Judge